

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

KEITH W. DEWITT, SR.	§	
VS.	§	CIVIL ACTION NO. 1:21-CV-2
WARDEN, USP BEAUMONT	§	

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Keith W. DeWitt, Sr., a prisoner confined at the United States Penitentiary in Beaumont, Texas, proceeding *pro se*, filed this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

The Court referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The magistrate judge recommends granting Respondent's Supplemental Motion for Summary Judgment [Dkt. 9] and dismissing the Petition as moot.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge [Dkt. 10] filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed Objections to the Report and Recommendation of United States Magistrate Judge [Dkt. 12].


The Court has conducted a *de novo* review of the Objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court concludes the Objections are without merit. Petitioner does not dispute that his disciplinary conviction was expunged or that his good conduct time has been restored. Instead, Petitioner alleges that his

assignment to a penitentiary was improper because it was based, at least in part, on the disciplinary conviction. Petitioner's allegations concerning his assignment to a penitentiary are not cognizable in a habeas proceeding because they do not impact the fact or duration of Petitioner's confinement. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (petition for writ of habeas corpus is the appropriate means for a prisoner to challenge the fact or duration of his confinement); *Richardson v. Fleming*, 651 F.2d 366, 372 (5th Cir. 1981) (a civil rights action is an appropriate means for recovering damages resulting from illegal administrative procedures or the conditions of confinement). Therefore, the magistrate judge correctly concluded that the Petition should be dismissed as moot.

ORDER

Accordingly, Petitioner's Objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. Respondent's Supplemental Motion for Summary Judgment is **GRANTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED this 20th day of January, 2022.



Michael J. Truncala
United States District Judge